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Attorneys for plaintiff and the Class

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

LEON ALPERT, an individual on behalf of
 himself, and on behalf of all persons similarly
 situated, and on behalf of the general public,

Plaintiff,

vs.

TIME WARNER CABLE INC., a Delaware
 Corporation, and Does 1 to 100,

Defendant

) Case No. 08 CV 582 W WMc

) **CLASS ACTION**

) **DECLARATION OF BARRON E. RAMOS**
) **IN OPPOSITION TO DEFENDANT'S**
) **MOTION FOR SUMMARY JUDGMENT**

) Date: June 30, 2008

) Time: 10:00 a.m.

) Place: Courtroom 7; 880 Front Street, San
) Diego, CA

) Judge: Hon. Thomas J. Whelan

) [No Oral Argument Pursuant to LR 7.1(d)(1)]

) Complaint: March 13, 2007

) Removal: March 27, 2008

I, Barron E. Ramos declare as follows:

1 I am one of the attorneys for plaintiff in this class action litigation and have personal
2 knowledge of each of the facts set forth herein. If called upon as a witness I could and would
3 testify competently thereto

4 2 This declaration is submitted in opposition to Time Warner Cable's (TWC) Motion for
5 Summary Judgment (MSJ).

6 3 In response to a Request for Production of Documents, TWC produced recordings of all of
7 the conversations it had with Alpert, except the one in the fall of 2006 where he requested that his
8 bill be corrected. According to TWC's counsel, someone destroyed that recording. This was
9 confirmed during the deposition of TWC's PMK. Exhibit A, Depo Rhodes, at p 200:23. In other
10 words, TWC admits it destroyed the recording even though the lawsuit had been pending for at
11 least six (6) months at the time.

12 4 Exhibit A attached hereto is a true and correct copy of various pages of the deposition
13 transcript of Ms Terri Rhodes.

14 5 Exhibit B attached hereto is a true and correct copy of TWC's San Diego/Desert Cities'
15 Response to Plaintiff's Special Interrogatories No. 14, 15.

16 6 Exhibit C attached hereto is a true and correct copy of TWC's HOA pricing sheet that
17 Alpert received attached to his HOA's newsletter in the fall of 2006.

18 7 Exhibit D attached hereto is a true and correct copy of the deposition transcript of Leon
19 Alpert at pp. 97-106

20 I declare under penalty of perjury under the laws of the State of California that the
21 foregoing is true and correct. Executed this 19 day of March, 2008 at Encinitas, California.

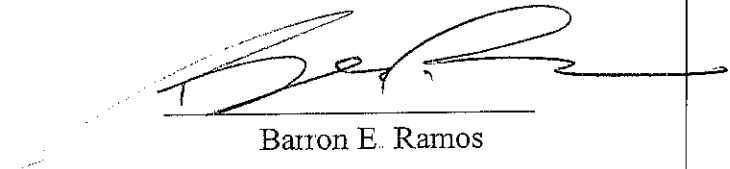
22
23 
24 Barron E. Ramos
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EXHIBIT A

**Deposition of
TERESA JANE RHODES**

ALPERT v. TIME WARNER

*Taken On
March 14, 2008*

Transcript provided by:

HUTCHINGSSM
COURT REPORTERS, LLC
CSR 649

GLOBAL LEGAL SERVICES

800.697.3210

1 to write checks to Time Warner directly to do that is
2 going to pay fifty-five dollars more than -- fifty-four
3 ninety-five more than he had previously been paying,
4 whereas the person who was in the single family
5 residence across the street bill is going from about
6 fifty-one dollars to ninety-one dollars or about forty
7 dollars more

8 MS HUSSEY: Objection, vague as to time.

1:22P

9 MR. MARKHAM:

10 Q. Again, this is in the '05 and early '06 period
11 when you had the HOA DIGIPiCs.

12 A I would agree with the understanding that we
13 may be looking at two different years of rates.

14 Q. Yeah, there may have been a couple of dollar
15 shift in that gap period but we tried to get as close in
16 terms of the time in the months as we could. For
17 example, we knew that the HOA went in effect March of
18 '05 and the closest non-HOA rate card we could find
19 prior to that time was January, '05. And I guess it's
20 theoretically possible something could have shifted a
21 couple of dollars.

22 But it still looks like the kick to bring in those
23 whole DIGIPiC 4000 packages would have cost the HOA
24 fellow about \$55 more whereas the non-HOA person was
25 paying about \$40 more to upgrade to that same service

1 set Would you agree with me?

1:23P

2 A Yes.

3 Q Okay. Do you recall in any of the work you did
4 over the last five or ten years in the setting of
5 pricing at Time Warner any discussion with any other
6 Time Warner employees about the fact that it was costing
7 HOA customers more money to upgrade or increase their
8 services than it was costing people who were not in an
9 HOA?

10 A No

11 Q. Okay. Do you recall any -- ever seeing any
12 memos or emails which address that subject matter?

13 A. No, because we don't agree with the premise
14 that it's somehow different or unfair.

15 Q. Well, it's not -- that's getting a little
16 argumentative and I've tried to stay away -- I've just
17 tried to stay with numbers. But my question was whether
18 there were any emails or documents that address the --
19 specifically the subject of increases for
20 Additional Services and any discrepancy between the
21 cost of the increases between HOA members and non-HOA
22 members.

1:25P

23 A. No. In fact, if anything, it would be the
24 opposite of let's make some packages for the HOAs to
25 discount services for them from the a la carte pricing

1 question.

2 Q When we did the totals on what Time Warner was
3 collecting from Mr. Alpert in September of '06 and what
4 they were collecting from the homeowners' association
5 did we not get to a larger number than the DIGIPIC 4000
6 package would have cost a non-HOA member who had just
7 moved into a new single family dwelling unit?

2:46P 8 A Yes

9 Q Okay Then why do you say that Time Warner is
10 charging less to its customers who are HOA people than
11 to its customers who are not HOA people?

12 A We don't consider that that resident is
13 necessarily paying what's in the contract with us, with
14 an HOA or a multi-housing unit.

15 Q Okay Well, then who do you consider is paying
16 that negotiated price?

17 A Whoever the agreement is with.

18 Q Okay So you don't consider the collection
19 from the homeowners' association as part of the money
20 that is being paid to Time Warner from the HOA unit
21 owners in the various units?

22 MS. HUSSEY: Objection, vague.

23 THE WITNESS: As we're setting pricing we would not
24 consider that they have a charge on cable.

25 MR. MARKHAM:

1 Q. Which is the high speed Internet access service
2 and that could be either wired or wireless as we talked
3 about before?

4 A. Yes.

5 Q. And is there like a cheaper version of the
6 Internet, something called Light or Road Runner --

7 A. Yes.

8 Q. -- Light? What is Road Runner Light?

9 A. It's a different speed, a slower speed than
10 standard Road Runner.

11 Q. Okay. But it's still a cable wire that comes
12 into people's houses or condos that provides Internet
13 access along the wire?

2:51P

14 A. Yes.

15 Q. Okay. And there's also digital telephone
16 service which is basically Internet telephony, the use
17 of the Internet to pass audio signals, correct?

18 A. Yes.

19 Q. And I think that's probably all I can think of.
20 You can probably think of others but I'm not thinking of
21 extra gadgets like converter boxes or digital recorders
22 or anything like that.

23 So what I was trying to get at though was -- and
24 for me the real breakdown was between the
25 Advantage Service, the Basic 75 channels and anything

1 above and beyond that, what the breakdown of your
2 customer base is as to what percentage of them really
3 confine themselves to the Advantage 75 channels and what
4 percentage buys something more and in addition to the
5 Basic 75 or 76 channels.

6 MS. HUSSEY: Objection, vague, conjunctive and
7 exceeds the scope of the PMK deposition notice.

8 MR. MARKHAM:

9 Q. Oh, well, do you know approximately what --

10 A. It would be about 45 percent that have regular
11 Advantage Service and about 55 percent digital.

12 Q. Okay. Anything above Advantage is what you
13 call digital?

14 A. Yes.

15 Q. Because it is a digital fee?

16 A. Yes.

17 Q. At least up until recently I think at least.
18 Wasn't it true this month or last month or something or
19 is it next year that everything is supposed to go
20 digital --

21 A. It's next year.

22 Q. -- for everywhere because even the T.V. signal
23 will be digital?

24 Okay. Let me start going through some of the
25 documents. I also want to make sure that I've covered,

1 and I think I have covered much of the items that we
2 listed on Exhibit 1.

3 Okay. Question Number 1, which is where we
4 started, we had gone over some of the rate cards. As I
5 understand it, they might have changed and there might
6 have been earlier ones affecting different time periods.

7 But we looked at the non-HOA and the HOA rate cards
8 for the '05 and '06 time period, which are the various
9 exhibits we referred to, and as I understand what you
10 were saying is there is a difference between a la carte
11 and bundled pricing but very often what's called
12 a la carte pricing is sort of a mixed or hybrid version
13 of the a la carte that has bundles on a bill with other
14 a la carte items like we were looking at in Mr. Alpert's
15 bill from September, '06 --

16 MS. HUSSEY: Objection, vague.

17 MR. MARKHAM:

18 Q. -- correct?

19 A. Yes.

20 Q. And that, if I understand what you testified to
21 earlier, for at least the pre-'05 time period an HOA
22 member asking for additional or digital service above
23 and beyond the Basic 76 would normally have been put
24 into an a la carte or a la carte hybrid bill rather than
25 one of the DIGIPiC type bundles because it would have

1 been less expensive for that customer to do so?

2 A. Yes.

3 Q. Okay. And I gather in response to
4 Question Number 2 for HOA members Time Warner Cable's
5 position is that it did not double charge for the
6 amounts that were being collected under bulk service
7 agreements from HOAs because the billings to HOA members
8 did not reflect a separate line item for the
9 Basic Advantage Service, correct?

10 A. Yes.

11 Q. Let's skip over three because I think we've
12 covered it to the extent that it's clearly asked there.

13 Okay. Question Number 4, when these HOA bundles
14 started to be used in about the first or second quarter
15 of '05 what did you folks do to make known that these
16 HOA packages or bundles such as the HOA DIGIPIC bundles
17 were available to customers who were already subscribers
18 from Time Warner Cable and customers? I'm talking about
19 the HOA customers.

20 MS. HUSSEY: Objection, vague as to geographic
21 area.

22 MR. MARKHAM:

23 Q. I'm talking about the region you had
24 jurisdiction over.

25 MS. HUSSEY: And what does that mean?

1 A It's maybe or maybe not. We've looked in our
2 records and don't find anything else. But my
3 recollection is that we did some promotion of our HOA
4 bundles in the Desert.

5 Q In the newspaper?

6 A In -- in possibly print and direct mail.

7 Q Okay. I thought you were sure on direct mail

8 A I am sure on direct mail.

9 Q But you're not sure --

10 A I remember doing --

11 Q -- as far as newspapers?

12 A Right.

13 Q And you looked for newspaper ads but couldn't
14 find any?

3:04P 15 A Right

16 Q And then if we move to San Diego County
17 subscribers, do you know if there was any media
18 advertising that specifically mentioned the HOA rates in
19 media, again meaning either newspaper, T.V or radio?

20 A No, there was not.

21 MS. HUSSEY: Vague as to San Diego

22 MR. MARKHAM:

23 Q The San Diego County subscribers, do you know
24 if you did any direct mail advertising or any kind of
25 notice to the HOAs or the HOA customers that these HOA

1 rates were in effect in '05 and '06?

2 A. What we would have --

3 MS. HUSSEY: Objection, vague as to location.

4 THE WITNESS: What we would have done is mail them
5 the same offer as anyone else, again, Road Runner,
6 twenty-nine ninety-five a month for six months. At the
7 time they call the CSR or go into a payment center, the
8 CSR would talk to them about the packages that would be
9 available after their discount period.

10 MR. MARKHAM:

05P 11 Q. Okay. So there was nothing in the direct
12 mailing though that might have triggered a response and
13 a further discussion though that mentioned the subject
14 of HOA rates or HOA packages such as DIGIPIC?

15 MS. HUSSEY: Objection, vague as to location.

16 MR. MARKHAM:

17 Q. In San Diego County areas where you had HOA
18 subscribers.

19 A. We often would mention about bundling and
20 savers, saving every month when you combine services.

21 Q. But, again, any -- any communications that
22 actually mention the word HOA or HOA rates or new HOA
23 packages or words to that effect?

24 A. Not that I recall.

25 Q. Do you recall any consideration of any

1 or not the idea of switching over to the HOA DIGIPiC
2 bundle originated with a Time Warner service rep or
3 Mr. Alpert?

4 MS. HUSSEY: Objection, vague, confusing.

5 THE WITNESS: The customer would have had to have
6 called to talk to the service rep about his services and
7 at that point made a -- made a change. The CSR is
8 trained to talk to the customer about what the
9 differences would be if they changed their package.

10 MR. MARKHAM:

11 Q Well, do you know actually one way or another
12 what Mr. Alpert said when he first called the
13 Time Warner service rep?

14 A No.

15 Q Would it be fair to say that you don't know
16 whether the idea of switching over the HOA DIGIPiC
17 bundle that was in effect in the fall of '06 came from
18 the service rep as opposed to Mr. Alpert?

19 MS. HUSSEY: Objection, vague, confusing, and it's
20 not in line with Mr. Alpert's testimony either.

21 MR. MARKHAM:

4:12P 22 Q You can --

23 A I don't know what their conversation was.

24 Q Okay. Basically you don't really know what was
25 said by either of the two parties to that conversation?

1 after a year; is that correct?

2 A Yes.

3 Q Is there a way to tell when this audio
4 recording was actually destroyed?

5 A I -- I would have to check to see if we kept a
6 record of the destruction dates.

7 Q Okay. But if the audio recording was normally
8 destroyed after a year and this conversation took place
9 in October of '06 -- was it September or October?

10 MR. RAMOS: September.

11 MR. MARKHAM:

12 Q September, the date -- some date in September
13 of '06, then that audiotape would normally have been
14 destroyed in or about September of '07; is that correct?

4:25P 15 A Yes.

16 Q But this lawsuit was filed and served in March
17 of '07, correct?

18 A Yes.

19 Q So that the audiotape was destroyed about five
20 or six months approximately after the lawsuit had been
21 filed or served assuming the normal record retention
22 policy had been followed?

23 A Yes

24 Q Okay. Do you know if there was any effort to
25 look for records or documents of any kind that related

1 these tracts and condo developments?

2 A. My understanding of why we include paragraphs
3 like this is so that we can go in and market our
4 services to the residents there And we would love
5 anything they'll do with us.

6 Q. Okay.

7 A. Most of the time we can't get them to take
8 materials and other things from us

4:41P 9 Q. Okay Well, under this Clause 4.4 and 1.4,
10 what I'm really trying to get at is this -- this then in
11 2005 and 2006 of HOA bundles, the HOA DIGIPiC packages
12 we were talking about before, to your knowledge there
13 was not a mass mailer for -- or communication of the new
14 rates to the various homeowners' associations, at least
15 in San Diego County?

16 MS HUSSEY: Objection to the characterization of
17 rates

18 MR. MARKHAM: The rates, the rate cards for the
19 DIGIPiC HOA bundle.

20 THE WITNESS: And the HOA bundles are a discount
21 like these other things are discounts They're not
22 rates in particular But I do not recall that we did
23 any direct marketing of the HOA bundles. Again, we
24 would depend on general marketing out in the marketplace
25 to drive sales for us

EXHIBIT B

1 JEFFREY M. SHOHEI (Bar No. 067529)
JULIE L. HUSSEY (Bar No. 237711)
2 CARRIE S. DOLTON (Bar No. 234298)
DLA PIPER US LLP
3 401 B Street, Suite 1700
San Diego, CA 92101-4297
4 Tel: 619 699 2700
Fax: 619 699 2701

5 Attorneys for Defendant
6 TIME WARNER ENTERTAINMENT-ADVANCE/
NEWHOUSE PARTNERSHIP, A NEW YORK
7 GENERAL PARTNERSHIP, THROUGH ITS SAN
DIEGO DIVISION, DBA TIME WARNER CABLE

8
9 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

10 CENTRAL DIVISION

11
12 LEON ALPERT, an individual, on behalf
of himself, on behalf of all those similarly
13 situated, and on behalf of the general
public,

14 Plaintiff,

15 v.

16 TIME WARNER CABLE, INC., a
17 Delaware corporation, and DOES 1 TO
100,

18 Defendants

CASE NO. GIC881621

**TIME WARNER ENTERTAINMENT-
ADVANCE/ NEWHOUSE PARTNERSHIP,
A NEW YORK GENERAL PARTNERSHIP,
THROUGH ITS SAN DIEGO DIVISION,
DBA TIME WARNER CABLE'S
RESPONSES TO SPECIAL
INTERROGATORIES (SET ONE) OF
PLAINTIFF LEON ALPERT**

Dept: 63
Judge: Luis R. Vargas

RESPONSE TO SPECIAL INTERROGATORY NO. 13:

In addition to the General Objections set forth above, which are incorporated by reference herein, TWC—SAN DIEGO/DESERT CITIES objects to this Interrogatory on the grounds that it is vague and ambiguous as to the meaning of “HOA bundle,” and potentially seeks disclosure of information that is protected by the privacy rights of third parties.

Subject to and without waiving the foregoing objections or the General Objections set forth above, and assuming, for purposes of this Interrogatory, that “HOA bundle” refers to the bundled services that Plaintiff ordered in or about September 2006, TWC—SAN DIEGO/DESERT CITIES responds as follows: Bertha Ruiz

SPECIAL INTERROGATORY NO. 14:

Did plaintiff Alpert have bundled services before he had the conversation with YOUR customer service representative that resulted in Alpert being placed in an HOA bundle in the fall of 2006?

RESPONSE TO SPECIAL INTERROGATORY NO. 14:

In addition to the General Objections set forth above, which are incorporated by reference herein, TWC—SAN DIEGO/DESERT CITIES objects to this Interrogatory on the grounds that it is vague and ambiguous as to the meaning of “YOUR” and “HOA bundle.”

Subject to and without waiving the foregoing objections or the General Objections set forth above, and assuming, for purposes of this Interrogatory, that “YOUR” refers to TWC—SAN DIEGO/DESERT CITIES, as defined above, and “HOA bundle” refers to the bundled services that Plaintiff ordered in or about September 2006, TWC—SAN DIEGO/DESERT CITIES responds as follows: Yes.

SPECIAL INTERROGATORY NO. 15:

If Plaintiff Alpert had bundled services before he had the conversation with YOUR customer service representative that resulted in Alpert being placed in an HOA bundle in the fall of 2006, please identify each and every bundle he already had in place at the time that conversation occurred.

////

RESPONSE TO SPECIAL INTERROGATORY NO. 15:

In addition to the General Objections set forth above, which are incorporated by reference herein, IWC—SAN DIEGO/DESERT CITIES objects to this Interrogatory on the grounds that it is vague and ambiguous as to the meaning of “YOUR” and “HOA bundle.”

Subject to and without waiving the foregoing objections or the General Objections set forth above, and assuming, for purposes of this Interrogatory, that “YOUR” refers to IWC—SAN DIEGO/DESERT CITIES, as defined above, IWC—SAN DIEGO/DESERT CITIES responds as follows:

~~Tier Package~~ (Digital Movies, Digital Variety) (Plaintiff's ~~San Diego Account~~);

~~Premium Package~~ (HBO, Cinemax, Showtime, Starz) (Plaintiff's ~~San Diego Account~~);

~~Digipic 2000 Combo~~ (Plaintiff's ~~Desert Cities Account~~).

SPECIAL INTERROGATORY NO. 16:

If plaintiff Alpert had bundled services before he had the conversation with YOUR customer service representative that resulted in Alpert being placed in an HOA bundle in the fall of 2006, for each bundle Alpert had at that time, please state whether Alpert had specifically requested that particular bundle or whether YOU had bundled Alpert

RESPONSE TO SPECIAL INTERROGATORY NO. 16:

In addition to the General Objections set forth above, which are incorporated by reference herein, IWC—SAN DIEGO/DESERT CITIES objects to this Interrogatory on the grounds that it is vague and ambiguous as to the meaning of “YOU,” “YOUR” and “HOA bundle.” IWC—SAN DIEGO/DESERT CITIES further objects to this Interrogatory on the ground that it requests information that is equally available to Plaintiff and/or solely available from Plaintiff since it seeks information relating to whether he made certain requests. IWC—SAN DIEGO/DESERT CITIES also objects to this Interrogatory on the grounds that it is compound, conjunctive, and disjunctive and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence

Subject to and without waiving the foregoing objections or the General Objections set forth above, and assuming, for purposes of this Interrogatory, that “YOU” and “YOUR” refers to

EXHIBIT C



San Diego and Desert Cities 2006 DIGIPIC HOA Packages

HOA DIGIPIC On-Demand

- Advantage Service
- Favorites On Demand
- Music Choice
- One Digital Pak-Variety, Movies, Sports or Mas Latino!
- Access to select HD TV channels
- Interactive Program Guide

Access to for additional cost:

- Movies on Demand
- Pro and College Sports Paks

\$16.00 with converter
Additional TV's pay \$8.00 per converter

HOA DIGIPIC On-Demand 1000

- Advantage Service
- Favorites On Demand
- Music Choice
- Access to select HD TV channels
- Interactive Program Guide
- One Premium
- Premium on Demand
- One Digital Pak-Variety, Movies, Sports or Mas Latino!

Access to for additional cost:

- Movies on Demand
- Pro and College Sports Paks

\$29.95 with converter
Additional TV's pay \$8.00 per converter

HOA DIGIPIC On-Demand 2000

- Advantage Service
- Favorites On Demand
- Music Choice
- Access to select HD TV channels
- Interactive Program Guide
- Two Premium's
- Premium on Demand
- Two Digital Paks-Variety, Movies, Sports or Mas Latino!

Access to for additional cost:

- Movies on Demand
- Pro and College Sports Paks

\$41.95 with converter
Additional TV's pay \$8.00 per converter

HOA DIGIPIC On-Demand 4000

- Advantage Service
- Favorites On Demand
- Music Choice
- Access to select HD TV channels
- Interactive Program Guide
- Four Premium's
- Premium on Demand
- Three Digital Paks-Variety, Movies, Sports or Mas Latino!

Access to for additional cost:

- Movies on Demand
- Pro and College Sports Paks

\$54.95 with converter
Additional TV's pay \$8.00 per converter

Combo with Road Runner or Earthlink
(Does not include Premium or Life)

\$94.95 with converter
Trio with Phone
\$124.95 with converter

Combo with Road Runner or Earthlink
(Does not include Premium or Life)

\$81.95 with converter
Trio with Phone
\$111.95 with converter

Combo with Road Runner or Earthlink
(Does not include Premium or Life)

\$69.95 with converter
Trio with Phone
\$99.95 with converter

Combo with Road Runner or Earthlink
(Does not include Premium or Life)

\$56.00 with converter
Trio with Phone
\$91.00 with converter

Premium Channel Add ON's-On Demand	Premium Channel Add ON's-On Demand 1000	Premium Channel Add ON's-On Demand 2000	Premium Channel Add ON's-On Demand 4000
First Premium \$11.00	One Premium add on only \$11.00	With Trio only \$11.00	
Any 2 Premiums \$18.00	First Premium \$11.00	First Premium \$11.00	
Any 3 Premiums \$24.00		All 4 Premiums \$18.00	
Any 4 Premiums \$29.00			

- When a customer adds on a Digital Pak not included in a package, they pay retail rates. The first Digital Pak is \$5 and each additional is \$3.
- DVR service (Not applicable to HD DVR) is available at a discounted rate of \$5.95 on one outlet. Additional outlets pay \$9.95. HD DVR pays \$9.95 per outlet.
- Road Runner Wireless can be added for an additional \$4.95 per month.
- HDV/Pak can be added for an additional \$6.95 per month. Use discount code HV.

Internal Use Only

March 28, 2006

EXHIBIT D

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO
CENTRAL DIVISION

LEON ALPERT, an individual, on
behalf of himself, on behalf of
all those similarly situated,
and on behalf of the general
public,

Plaintiff,

vs.

Case No. GIC881621

TIME WARNER CABLE, INC., a
Deleware corporation, and DOES
1 TO 100,

ORIGINAL

Defendants.

VIDEOTAPED DEPOSITION OF LEON SETH ALPERT

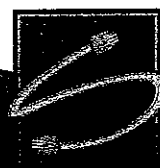
VOLUME 1

SAN DIEGO, CALIFORNIA

TUESDAY, NOVEMBER 6, 2007

Reported by:
R. Denise Marlow
CSR No. 11631

Job No. 75324



11:39:29 1 you that there were bundles that you could purchase
11:39:32 2 which would price the components of that bundle better
11:39:35 3 than if you bought them individually. Correct?

11:39:36 4 A Correct.

11:39:37 5 Q In fact, the subcomponents or some portions of
11:39:39 6 your existing billing had that feature to it. Correct?

11:39:43 7 A As far as I recall.

11:39:44 8 Q You had several of your movie channels -- I
11:39:48 9 mean, there was a package, and we'll get into this in a
11:39:51 10 minute, but there were -- there was a package of movie
11:39:53 11 channels where you bought four that were individually
11:39:56 12 priced at maybe 6.95 or whatever they were, and you got
11:40:00 13 them as a package for \$11. Correct?

11:40:02 14 MR. RAMOS: Objection. Best evidence. I mean
11:40:04 15 if you've got the document, let's see it.

11:40:06 16 BY MR. SHOHET:

11:40:06 17 Q Yes? Isn't that your recollection? That you
11:40:08 18 had --

11:40:08 19 A You're asking -- you're -- you're -- you're
11:40:10 20 giving me specific numbers, and I can't recall what the
11:40:12 21 specific numbers are.

11:40:13 22 Q I'm not asking about the specific numbers. I
11:40:16 23 asking the concept, that if you buy and commit to
11:40:18 24 purchase a bundle of services, you get a better price
11:40:22 25 the bundle than you get if you buy each of the

LEON SETH ALPERT

11/06/07

11:40:25 1 components individually. Right?

11:40:27 2 MR. RAMOS: Well, I'll object. It's vague and
11:40:28 3 ambiguous.

11:40:30 4 BY MR. SHOHEIT:

11:40:30 5 Q You understand, don't you?

11:40:31 6 A I understand that I purchased what I purchased
11:40:34 7 to get a better rate collectively than individually.

11:40:37 8 Q But I'm asking you about the concept. You
11:40:40 9 understand about the concept with Time Warner Cable and
11:40:43 10 with other companies, car rental companies -- Time
11:40:45 11 Warner isn't the first company to invent the concept
11:40:48 12 that if you commit to a package of services, you get a
11:40:52 13 lower rate than you get if you buy them individually.
11:40:54 14 You're familiar with that. As an economist, you
11:40:56 15 understand that, don't you?

11:40:58 16 MR. RAMOS: I'll object. He's not an
11:41:00 17 economist.

11:41:00 18 THE WITNESS: Yeah, I'm not an economist. I
11:41:03 19 have a degree in economy.

11:41:03 20 BY MR. SHOHEIT:

11:41:04 21 Q I thought you were.

11:41:06 22 It's not a surprise to you that that's a
11:41:09 23 practice that Time Warner engages in and other companies
11:41:10 24 engage in. That's my question.

11:41:10 25 MR. RAMOS: I'll object to the form of the

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11:41:13 1 question that we don't know Time Warner engages in that.

11:41:16 2 MR. SHOHET: Yeah, we do. We do because it's
11:41:19 3 on his bill before he changed to the Digipac 4000.

11:41:22 4 MR. RAMOS: Vague and ambiguous.

11:41:22 5 BY MR. SHOHET:

11:41:22 6 Q I'm not -- I'm not trying to argue with you.
11:41:24 7 I'm trying to get your answer to the question.

11:41:27 8 Is the concept that you can buy a bundle or
11:41:30 9 package of services and commit to that bundle and get a
11:41:33 10 cheaper price than you would get if you ordered each of
11:41:37 11 the components separately, is that a concept with which
11:41:39 12 you were familiar in September 2006?

11:41:42 13 A Yes, I believe so. I -- I ordered a certain
11:41:47 14 package to get a better rate. So I guess if that's what
11:41:49 15 you're saying, yes, that's what I did.

11:41:52 16 MR. SHOHET: Okay. Let's take a short break.
11:41:53 17 Do you want to break for the noon hour now, or do you
11:41:56 18 want to continue? What's your preference?

11:41:57 19 MR. RAMOS: Depends on how long you have.

11:42:00 20 MR. SHOHET: You know, I don't know. I've got
11:42:00 21 some documents to go through. I would say we're not
11:42:01 22 going to get done, in any event, much before 3:00 or
11:42:04 23 4:00 o'clock this afternoon.

11:42:06 24 THE WITNESS: I have a problem. I have to pick
11:42:07 25 up my daughter from school. I have to leave no later

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11:42:10 1 than 1:30.

11:42:11 2 MR. SHOHEIT: All right. Well, then, we won't
11:42:13 3 finish.

11:42:14 4 THE WITNESS: Okay.

11:42:16 5 MR. SHOHEIT: Not today.

11:42:16 6 Why don't we do this, then. If you've got to
11:42:16 7 go till 1:30, I don't think I'll finish you, and I'm not
11:42:18 8 going to rush it, but what we'll do is let's take, then,
11:42:22 9 a short break for now, and then we'll skip the noon
11:42:26 10 break. We'll work through till 1:00 o'clock if that's
11:42:29 11 acceptable to everybody. 1:15? What time do you have
11:42:32 12 to leave to pick up your daughter?

11:42:33 13 THE WITNESS: I would feel comfortable leaving
11:42:36 14 no later than 1:30.

11:42:36 15 MR. SHOHEIT: No later than 1:30?

11:42:40 16 THE WITNESS: Yeah, no later than 1:30 in my
11:42:41 17 car and --

11:42:41 18 MR. SHOHEIT: Well, let's work until -- through
11:42:43 19 until we, you know, collectively conclude that it's time
11:42:47 20 to break, and then we'll pick this up at another time.
11:42:50 21 All right?

11:42:50 22 Let's just take a short break now off the
11:42:52 23 record.

11:42:53 24 THE VIDEOGRAPHER: This marks the end of Media
11:42:55 25 No. 1, going off the record. Time is 11:42 a.m.

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11:42:58 1 (Off record)

11:42:58 2 THE VIDEOGRAPHER: Okay. We're back on the
12:08:33 3 record. The time is 12:08 p.m. This marks the
12:08:36 4 beginning of Media No. 2. This is the deposition of
12:08:39 5 Leon Alpert.

12:08:40 6 BY MR. SHOHEIT:

12:08:40 7 Q Just a few more questions, Mr. Alpert, about
12:08:43 8 the conversation that you had with the CSR. You said
12:08:45 9 words to the effect that, It looks like I have the
12:08:49 10 Digipac 4000, to the CSR. Is that true?

12:08:52 11 MR. RAMOS: I'll object. It misstates his
12:08:57 12 testimony.

12:08:57 13 BY MR. SHOHEIT:

12:08:57 14 Q I can read your testimony back for you if you'd
12:09:01 15 like.

12:09:01 16 A No. I -- I -- it could have been the four --
12:09:04 17 if the 4000 was the package that I had prior and -- then
12:09:09 18 it's correct. I identified a package that I currently
12:09:12 19 had at the time versus what the HOA package presented to
12:09:16 20 me by the association was, you know, the -- the thing,
12:09:19 21 the notice on the newsletter.

12:09:20 22 Q But the --

12:09:21 23 A So I said one on my bill, it looks like what I
12:09:25 24 have now is -- is this thing here that I -- from what I
12:09:28 25 got from the association.

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12:09:29 1 Q And on the association -- I think you answered
12:09:31 2 this -- you think it said Digipac 4000.

12:09:36 3 A Yeah, I could have. I'm sure -- I'm -- if
12:09:38 4 that's the bundle.

12:09:39 5 Q Okay. And what, if anything, do you recall the
12:09:47 6 CSR said in response to that?

12:09:49 7 A As far as I knew, she agreed with me.

12:09:51 8 Q And was she, then, familiar with the Digipac
12:09:55 9 4000 package?

12:09:56 10 MR. RAMOS: Objection. Calls for speculation.

12:09:58 11 THE WITNESS: I -- I imagine she was familiar
12:10:00 12 with whatever Time Warner products she was representing,
12:10:04 13 because she agreed with me.

12:10:06 14 BY MR. SHOHET:

12:10:06 15 Q You hadn't sent her the flier from the
12:10:10 16 homeowners association in advance of the conversation,
12:10:13 17 had you?

12:10:13 18 A No.

12:10:13 19 Q And did you mention -- well, withdraw that
12:10:18 20 question.

12:10:18 21 At least as far as you can tell, she had no
12:10:27 22 problem understanding what the Digipac 4000 bundle of
12:10:31 23 services was at the time you mentioned it to her.

12:10:33 24 MR. RAMOS: Calls for speculation.

12:10:34 25 THE WITNESS: Well, my understanding -- I mean,

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12:11:44 1 THE WITNESS: I don't know that she understood.
12:11:46 2 I think she knew what I was -- the bundle, because I
12:11:50 3 guess it was a bundle. I had the cable television, I
12:11:54 4 had the phone, and I had the Road Runner. So I had --
12:11:59 5 and the cable television had certain services associated
12:12:03 6 with it, you know, the digital HD, whatever, and she
12:12:07 7 agreed that -- that this HOA thing was the same thing or
12:12:13 8 similar enough, so that's -- we agreed on that point.

12:12:18 9 BY MR. SHOHEIT:

12:12:18 10 Q All right. But I guess my question is when you
12:12:20 11 said, It looks like I have the HOA Digipac 4000, she
12:12:25 12 didn't come back with a response that suggested to you
12:12:28 13 that she didn't know what you were talking about, did
12:12:32 14 she?

12:12:32 15 A No, I don't think so.

12:12:35 16 Q Okay. And then you said that she agreed with
12:12:48 17 you that the services that you were -- well, tell me
12:12:51 18 what you think she agreed with.

12:12:52 19 A That I was being overcharged.

12:12:54 20 Q And why so?

12:12:55 21 A Because Time Warner seems to have agreed to
12:13:00 22 provide the services that I was paying X amount of
12:13:02 23 dollars for for X amount minus a certain amount to the
12:13:07 24 homeowners at Seapointe townhomes, and I wasn't getting
12:13:09 25 a lower rate, so she gave me the lower rate.

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12:13:12 1 Q Did she tell you that the reason that the
12:13:15 2 Digipac 4000 was priced lower than the -- what you were
12:13:22 3 paying at the time was because you were in a homeowners
12:13:26 4 association or because you were purchasing the package
12:13:29 5 in a bundle?

12:13:30 6 MR. RAMOS: Objection. It's leading, first of
12:13:34 7 all, which I do know is permitted. However, you
12:13:38 8 characterized -- mischaracterized his testimony that
12:13:41 9 he's purchasing something at this juncture. He's not
12:13:43 10 purchasing anything.

12:13:44 11 MR. SHOHET: Okay. Let me withdraw the
12:13:45 12 question and start over again.

12:13:46 13 MR. RAMOS: Okay. Thank you.

12:13:47 14 BY MR. SHOHET:

12:13:47 15 Q What, if anything, else did she say to you
12:13:57 16 regarding why, in your view, she agreed with you that
12:14:01 17 we're being -- you were being overcharged? What
12:14:04 18 about -- what was different about the pricing that she
12:14:11 19 agreed you should be getting from the pricing that you
12:14:13 20 were getting?

12:14:14 21 A What was different? The price.

12:14:16 22 Q Nothing else?

12:14:18 23 A Not that I recall. The price was the issue.
12:14:21 24 That's the only thing I called about was the price.

12:14:24 25 Q So in -- there was no discussion about the fact

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12:14:29 1 that the reason the pricing would be lower was because
12:14:33 2 you were entitled to lower pricing as a result of the
12:14:37 3 HOA paying your basic cable rate?

12:14:40 4 A Well, I don't know the reason why I was
12:14:43 5 overcharged, first of all. I just knew I was being
12:14:48 6 overcharged. Second of all, she -- I said what I wanted
12:14:53 7 was a credit on my bill on the amount of however many
12:14:59 8 months I was being overcharged times the amount of the
12:15:04 9 overcharge per month. I thought perhaps I was being
12:15:08 10 overcharged for since 2005 and most -- and up to that
12:15:12 11 point in 2006. She said she wasn't authorized to do
12:15:16 12 that. The best she could do was lower my rate for what
12:15:21 13 it should be and should have been at that point in time,
12:15:24 14 and she was willing to throw in a free month of the
12:15:29 15 phone.

12:15:29 16 Q Now, is it your sworn testimony that there was
12:15:31 17 no discussion with the CSR about the fact that Time
12:15:34 18 Warner had developed a bundled rate or a bundled package
12:15:37 19 of services which your services just happened to fit
12:15:40 20 into?

12:15:40 21 A It's my sworn testimony that I have no
12:15:44 22 recollection about speaking about bundles with the Time
12:15:47 23 Warner rep, only about my bill and what I thought I
12:15:50 24 should be paying from the homeowners association.
12:15:53 25 That's -- that was the conversation.